

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-shl

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8 Debtor.

9 - - - - - x

10 Adv. Case No. 21-07088-shl

11 - - - - - x

12 BRIDGES et al.,

13 Plaintiffs,

14 v.

15 PURDUE PHARMA L.P., et al.,

16 Defendants.

17 - - - - - x

18 Adv. Case No. 22-07029-shl

19 - - - - - x

20 ASCENT PHARMACEUTICALS, INC.,

21 Plaintiff,

22 v.

23 PURDUE PHARMA L.P., et al.,

24 Defendants.

25 - - - - - x

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United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

October 25, 2022

11:03 AM

B E F O R E :

HON SEAN H. LANE

U.S. BANKRUPTCY JUDGE

ECRO: A. VARGAS

1 HEARING re Omnibus Hearing

2

3 HEARING re Doc. #5100 Motion For Approval Of Procedures For
4 (I) The Sale Of De Minimis Assets Free And Clear Of Liens,
5 Claims, Interests, And Encumbrances And (II) The Abandonment
6 Of Certain Of The Debtors Property

7

8 HEARING re Doc. #5095 Motion To File Proof of Claim After
9 Claims Bar Date Re: Claim 628995 Filed By Edward N. Whitman

10

11 HEARING re Adversary proceeding: 21-07088-shl Bridges et al
12 v. Purdue Pharma L.P. et al Status Conference

13

14 HEARING re Adversary proceeding: 22-07029-shl Ascent
15 Pharmaceuticals, Inc. v. Purdue Pharma L.P. et al
16 Status Conference: (Argument Scheduled On 12/6/2022)

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25 Transcribed by: Sonya Ledanski Hyde

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21
22 BY: JOHN C. DOUGHERTY

23
24 ALSO PRESENT TELEPHONICALLY:

25 ROXANA ALEALI

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4 DAVID E. BLABEY
5 SARA BRAUNER
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15 MARC KESSLEMAN
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22 EDAN LISOVICZ
23 JAMES L. MCCLAMMY
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1 KEVIN MCKENNEY
2 MICHELE MEISES
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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Sean Lane in the United States Bankruptcy Court for the Southern District of New York and we're here for the Purdue Pharma LP Chapter 11 case for a number of matters that are listed in the agenda that's filed on docket and in the amended agenda that was filed on the docket at Docket No. 5192.

I, given the length of the list of appearances, I will call out certain folks who I'm pretty sure are here and then I'll ask for other appearances. If I don't actually call you out, please don't take offense. It's just I'm trying not to call out multiple pages worth of appearances, many of whom are not actually here to be heard on the record but rather are listening in.

So with that, we will start with appearances. Let me find out who's here on behalf of the Debtors.

MR. HUEBNER: Good morning, Your Honor. Marshall Huebner of Davis Polk for the Debtors. Several of my colleagues are on with respect to different matters that are on today's agenda and I'll turn the podium over to them one at a time as appropriate.

THE COURT: All right. Good morning to you. And on behalf of the Official Committee?

MR. PREIS: Good morning, Your Honor. Arik Preis from Akin Gump Strauss Hauer and Feld on behalf of the

1 Official Committee.

2 THE COURT: All right. And is there someone here
3 on behalf of Edward Whitman, who's matter is on the agenda
4 for today? All right, there's no one here for Edward
5 Whitman. And then let me get appearances for folks who are
6 here for the adversary proceedings, the first of which is
7 the adversary proceeding involving Stacy Bridges as a
8 plaintiff. Let me find out who's here for the plaintiffs in
9 that case.

10 MR. OZMENT: Frank Ozment and I am here for Stacey
11 Bridges and Creighton Bloyd and I'm struggling to get my
12 video camera working.

13 THE COURT: All right. Sorry for your technical
14 difficulties, but I will say I'm nothing in particular to
15 look at so as long as we can hear you and you can hear us,
16 we will be good to go. I think you just popped up.

17 All right. And on behalf of the defendants in
18 that adversary, the United States.

19 MR. FOGELMAN: Good morning, Your Honor. Larry
20 Fogelman from the U.S. Attorney's Office for the Southern
21 District of New York on behalf of the United States.

22 THE COURT: Good morning. And then there's
23 another adversary proceeding that's on for status conference
24 involving Ascent Pharmaceuticals. Let me find out who's
25 here on behalf of Ascent.

1 MR. PAULSEN: Your Honor, Bruce Paulsen from
2 Seward and Kissel. With me is Robert Gayda.

3 THE COURT: All right. Good morning. So with
4 that, I will turn to the -- open the podium for other folks
5 who want to make an appearance for today's hearing, so let
6 me get those appearances.

7 MR. DOUGHERTY: Good morning, Your Honor. It's
8 John Dougherty at Mintz Levin. In connection with the so-
9 called Ascent adversary proceeding, I represent two non-
10 debtor defendants in that proceeding, so we're here if
11 needed.

12 THE COURT: All right. Good morning. Good to
13 have you. All right. Any other appearances? All right,
14 I'm not hearing any. I will say, I did notice that there
15 was at least signed up on the appearance sheet Carrie McGaha
16 or McGaha. Sorry if I'm mispronouncing that who's here for
17 a late filed motion, I think. I had understood that was
18 adjourned from today. I only mention it just because I want
19 to make sure somebody isn't appearing for that under the
20 understanding it's going forward when in fact it's been
21 adjourned. So let me just ask Debtors' counsel, maybe just
22 to confirm that I've got my facts right about the
23 adjournment.

24 MR. McCLAMMY: Good morning, Your Honor. Jim
25 McClammy for the Debtors. That is correct. That has been

1 adjourned to, I believe, the November omnibus hearing.

2 THE COURT: All right. And I assume that
3 adjournment was communicated to the other side?

4 MR. McCLAMMY: Yes. Yes. We sent it both by mail
5 and by email.

6 THE COURT: All right. So -- and let me ask if
7 there's anyone here for that matter, just in abundance of
8 caution so they don't sit through a lengthy hearing. All
9 right --

10 MS. McGAHA: Your Honor --

11 THE COURT: Yes.

12 MS. McGAHA: This is Carrie McGaha and I am here.
13 I am just present. I am not wanting to talk about that.
14 I'm waiting for the November 16th, but I am here just to
15 keep up.

16 THE COURT: All right. You're here nonetheless,
17 but you understand that that matter's been adjourned?

18 MS. McGAHA: Yes, Your Honor. I do. Thank you
19 very much.

20 THE COURT: Okay, great. Just -- always good to
21 clarify these things in case there's any risk of confusion.
22 All right. So one last call for any other appearances this
23 morning. All right. With that, I will turn it over to
24 Debtors' counsel to walk us through the agenda. I have the
25 amended agenda in front of me and take it away, counsel.

1 MR. HUEBNER: So good morning, Your Honor. We
2 propose to go in order right down the agenda. Addition, I
3 think Your Honor had some questions on the de minimis asset
4 sales motion so at chambers' request we added it and Mr.
5 Robertson will be prepared to address those, but I think
6 there's one contested matter and two status conferences and
7 that is it.

8 So we're not as good as last month where we
9 canceled the hearing entirely, which is always our
10 preference, to have everything resolved and save everybody
11 burden and the estate the expense of having a hearing at
12 all, but this one hopefully will be relatively
13 straightforward. So unless Your Honor has any questions for
14 me, I have nothing to report. We are continuing to
15 (indiscernible) Second Circuit and I will propose to turn it
16 over to Mr. Robertson to assist with the de minimis asset
17 sales.

18 THE COURT: All right. Good to see Mr. Robertson.
19 Happy to do that. And so I'll start off on number one just
20 because I think this was at my request and this is sort of a
21 theme for today, I think. This kind of de minimis asset
22 sale motion is something that is filed in large cases. The
23 motion itself looks perfectly fine and appropriate terms of
24 the notices that you're going to provide and how you're
25 going to handle different values and what's going to happen

1 if somebody gets notice and objects and who gets notice and
2 all that good stuff. So the reason I wanted to put it on is
3 just given the posture of the case.

4 One is, this is obviously an unusual case in terms
5 of the number of folks who have a very profound interest in
6 it for lots of good reasons. And two, given the procedural
7 posture, where we find ourselves, and I just wanted to sort
8 of have a discussion on the record of this rather than deal
9 with it on presentment just so that you could address the
10 question as to the appropriateness of this motion at this
11 time under these particular circumstances in the case.

12 I suspect I have an idea of what you're going to
13 say, but again, I think in the interest of transparency and
14 process, I thought it was appropriate to just have that
15 discussion on the record.

16 MR. ROBERTSON: Absolutely. This is, for the
17 record, Christopher Robertson, Davis Polk and Wardwell. Can
18 I be heard clearly in the Court?

19 THE COURT: Yeah, please.

20 MR. ROBERTSON: Great. So the reason why we're
21 bringing this motion at this time primarily is to address
22 the sale of certain equipment that is currently at the
23 Debtor Rhodes Pharma's location in Coventry, Rhode Island.
24 So you may recall there was formerly an API manufacturing
25 facility that a separate Debtor, Rhodes Tech had up in

1 Coventry. That plan was sold last year. Rhodes Pharma has
2 maintained a presence in Coventry in a separate building on
3 the same, you know, premises.

4 During the transition activities, during that
5 Rhodes Tech sale, that process is almost over and Rhodes
6 Pharma is now in the process of moving its headquarters and
7 operations down to North Carolina where the Debtors' other
8 operations are. Some equipment that's up in Rhode Island is
9 not being transferred down to North Carolina. The value is
10 under a million dollars, about \$400,000 worth of equipment.

11 Arguably, because this is a headquarters
12 transition and some operations are being moved, it's not --
13 it might not be ordinary course and sort of given that, we
14 thought it was appropriate to get court approval for the
15 transaction and we thought that doing a procedure motion
16 such as this was the right way to go, one because it allows
17 the company to then divest any other sort of small ancillary
18 equipment or otherwise that's up in Rhode Island that might
19 not be covered by the initial motion or sold to a different
20 party or something like that.

21 That's one. And then on a go-forward basis, you
22 know, as the company continues to operate in bankruptcy,
23 there may be other small de minimis non-core assets the
24 company wants to, you know, sell in the best interest of the
25 estate. To the extent those transactions arise, these

1 procedures would also allow the company to do that in a
2 streamlined manner, an efficient manner. I think it was
3 clear in the motion we clarified again in the procedures,
4 the amended procedures we filed on October 10th that these
5 sales are not sales of, you know, the core branded opioid
6 franchise.

7 These are non-core, non-opioid de minimis asset
8 sales or potentially abandonments. And so for that reason,
9 we thought it was appropriate to bring the motion at this
10 time, understanding that this obviously -- we've been in
11 bankruptcy for a while without this motion, but we think it
12 is helpful at this juncture.

13 THE COURT: All right. So as these motions are
14 often, they're really in the interest of efficiency to allow
15 for the disposition of these kinds of assets and from what
16 I'm hearing, it seems pretty clear that regardless of how
17 the appeal is resolved that this kind of motion, these kinds
18 of procedures will be helpful to the estate in any
19 circumstance.

20 MR. ROBERTSON: That's correct, Your Honor.

21 THE COURT: All right. Thank you very much. I
22 appreciate that. I thought that's what you were going to
23 say but you provided some additional detail and again, I
24 just think it's helpful to get these things -- have an open
25 discussion about it. So with that, unless anybody else

1 wishes to be heard on the de minimis asset sale motion,
2 which was on for presentment, there were no objections, and
3 again, this was put on the agenda at my request, and thank
4 you for that. I'm happy to approve that motion and will
5 enter the order. I didn't have any problem with the order.
6 It looked to be a fairly standard order for this kind of a
7 motion and so with that, I think we can move on to the next
8 matter.

9 MR. HUEBNER: Your Honor, one small point to make
10 because it actually, it turns out, a thread that's running
11 through several items today. Obviously, we're all very well
12 aware that we're waiting for the Second Circuit and so in
13 general our philosophy in working with our constituencies on
14 this is that we only bring things to the Court that make
15 sense, essentially whether or not the current plan is going
16 to move forward and so anything that is in connection with
17 implementation of the specific plan that is currently frozen
18 on appeal, obviously, (indiscernible) single thing that
19 appeared on the docket (indiscernible) it was our view,
20 subject to being redirected or corrected, anything that we
21 bring the Court is something that we believe should proceed
22 at this time irrespective of -- or at least progress at this
23 time irrespective of what direction the ultimate
24 reorganization ultimately takes. We may have hopes and
25 aspirations to a direction but we don't take action based on

1 those hopes and aspirations (indiscernible).

2 THE COURT: And that makes perfect sense and
3 that's what my assumption was. Of course, we all know that
4 the words de minimis in a case of this size will strike
5 people in different ways and so that's another reason, just
6 for purposes of the record, I think it's helpful to have a
7 short discussion but thank you for the information. It is
8 helpful. And even if it is, I think, fairly well understood
9 by folks who've been involved in the case exactly what you
10 just said, never hurts to put it on the record occasionally
11 from time to time.

12 So all right. And thank you for -- Mr. Robertson
13 and with that, we can move on to the next matter.

14 MR. HUEBNER: Your Honor, I think the next matter
15 is the sole contested matter, handled by Ms. Esther Townes
16 and I think she will handle (indiscernible) from the Davis
17 Polk perspective when she completes that number. Thank you.

18 THE COURT: All right. Thank you very much. Ms.
19 Townes.

20 MS. TOWNES: Good morning, Your Honor. This is
21 Esther Townes from Davis Polk on behalf of the Debtors. Can
22 you hear me all right?

23 THE COURT: I can hear you just fine. Thank you
24 so much.

25 MS. TOWNES: Okay, great. So the next item on the

1 agenda is the late claim motion that was filed by Mr. Edward
2 Whitman who I believe you mentioned earlier did not appear
3 to be on the Zoom today. The Debtors and the Creditors
4 Committee's position is set out in our joint response at
5 Docket 5183, so I'll be pretty brief, but essentially we
6 believe that Mr. Whitman's last claim motion and the
7 circumstances that he alleged therein are substantially
8 similar to the prior two late claim motions that were on the
9 August omnibus hearing where you deferred a ruling.

10 In particular, based on the assertions that are in
11 the motion regarding Mr. Whitman's incarceration and the
12 lockdowns at the facility in which he was incarcerated
13 related to the COVID-19 pandemic which were confirmed by the
14 UCC through their diligence including lack of access to
15 information, legal library resources, and visitation coupled
16 with the fact that Mr. Whitman filed his proof of claim in
17 March of 2022 which is before one of the motions that was on
18 in August as well as that he filed his late claim motion
19 shortly after he was released from incarceration in
20 September of 2022; based off of all of that, we believe that
21 there may be a colorable basis to grant the motion.

22 But as before, we believe it would be reasonable
23 to defer that ruling until the first omnibus hearing that's
24 held at least 21 days after the court enters the final order
25 on a modified plan to be able to allow the Debtors, the

1 Creditors Committee, and of course the Court to be able to
2 make an informed decision at that time now that, you know,
3 we're over two years after the bar date based off of the
4 universe of late claim motions that have been filed at that
5 time.

6 As before, we filed a joint response with the
7 Creditors Committee. We also consulted with the Ad Hoc
8 Committee of Individual Victims and they indicated that they
9 do not oppose the relief requested and so unless Your Honor
10 has any questions, we would ask that the order that we
11 attached as Exhibit A to the joint response be entered.

12 THE COURT: All right, thank you very much. And
13 let me ask one more time if Edward Whitman is on today's
14 Zoom hearing. All right, he does not appear to be on the
15 Zoom hearing. Counsel, I think you've very succinctly and
16 very well explained the status of the motion and the reasons
17 for granting the requested relief for purposes of
18 consistency in terms of dealing with these kinds of claims
19 together at the appropriate time so that we can draw one
20 line and deal with these kinds of motions fairly, so I'm
21 happy to grant your request in all respects.

22 I note it is not opposed and it is a very sensible
23 and equitable way to handle this kind of a problem. So I am
24 happy to enter the kind of proposed order that you request
25 and will do that and will deal with this in the fullness of

1 time at the appropriate time.

2 MS. TOWNES: Great. Thank you, Your Honor. With
3 that, I believe for the next agenda item or for the status
4 conference, I'm turning it over to Benjamin Kaminetzky.

5 THE COURT: All right, and I will just use this
6 opportunity to say I'm always happy to see younger lawyers
7 in these hearings. I applaud the firm for giving younger
8 lawyers an opportunity and in fact folks have done an
9 excellent job. So thank you very much.

10 And so with that I think we can segue to the next
11 matter on the agenda, which is the adversary proceeding
12 brought on behalf of Stacey Bridges and Creighton Bloyd and
13 other similarly situated against Purdue Pharma and the
14 United States. And so this is a status conference. I did
15 take a look at what appears to be essentially the very
16 stipulations that have been filed to essentially sort of
17 keep us in a holding pattern which is sort of
18 understandable, and I think what I'll do is let me hear from
19 you all to get a sense of where you think things are or
20 where they're going or where they're not going until we get
21 a decision and so I'm not sure who wants to take the
22 laboring oar on this.

23 MR. KAMINETZKY: I'm happy to give Your Honor the
24 Debtors' perspective. My name is Benjamin Kaminetzky, Davis
25 Polk. So I'm happy to start unless you'd like to hear from

1 someone else first.

2 THE COURT: No, that's fine. It's plaintiff's
3 case, but obviously there's a very large significant context
4 that is very much appropriate to hear from you on, so we'll
5 make sure to hear from everybody before we're said and done,
6 so I have no problem with you kicking it off.

7 MR. KAMINETZKY: Thank you, Your Honor. Again,
8 Ben Kaminetzky, Davis Polk, for the Debtors. So to provide
9 some background, this adversary proceeding seeks to
10 equitably subordinate the United States' claims in this
11 case. These claims arise from a criminal resolution and
12 civil settlement between the United States Department of
13 Justice and the Debtors, which Judge Drain approved by a
14 Rule 9019 order almost two years ago on November 18th, 2020.

15 Pursuant to that settlement with the DOJ and the
16 Court's Rule 9019 order, the United States is to receive
17 three allowed claims, not subject to subordination. Again,
18 none of the -- under the terms of the 9019 order, none of
19 the United States' claims stemming from the plea agreement
20 and the civil settlement may be subject to subordination.
21 Now, this resolution, on reaching resolution with the DOJ at
22 that time per the 9019 motion order was a critical milestone
23 in this case, the importance of which cannot be overstated.

24 The Debtors believe that the motions to dismiss
25 the complaint that were filed in this adversary proceeding

1 should not await resolution of the Second Circuit appeal.
2 The 9019 order approving the plea agreement and the civil
3 settlement, giving the government unsubordinated claims
4 again approved by Judge Drain after extensive briefing and a
5 full day hearing and not subject to appeal and therefore
6 absolutely final with a capital F, and this adversary
7 proceeding seeking to collaterally (Indiscernible) that
8 final order I -- are entirely independent from the appeal of
9 the confirmation order and the third-party release issue
10 that's on appeal.

11 Whether it's this current plan or some other plan
12 win or lose or draw in the Second Circuit, the DOJ
13 settlement remains a cornerstone to any plan and we believe
14 it is important to remove any (indiscernible) or uncertainty
15 with respect to the status of the United States' claims in
16 this case. And of course, in the very unlikely event that
17 the Court somehow entertains this meritless collateral
18 attack, the United States may very well take the position
19 that it's not getting the consideration it bargained for and
20 take the position that it could walk away from the plea and
21 settlement agreement, and I shudder to think what then
22 happens for this case.

23 So Your Honor, clarity is important here, to the
24 Debtors, to the government, and indeed to all the
25 constituencies who negotiated with the DOJ settlement as a

1 backdrop and better to get the clarity now so we can hit the
2 ground running when the Second Circuit rules.

3 Accordingly, we ask that Your Honor enter the
4 stipulation that's agreed to by all the parties that we
5 filed on Thursday. It's Docket No. 20 which sets forth the
6 briefing schedule for the motion to dismiss. I think we
7 have the opportunity now to get clarity and there's no
8 reason for us to wait until the Second Circuit rules when
9 there'll be 101 other things to deal with and certainly
10 having clarity now as to the United States' claim is
11 essential to any discussions that happen following the
12 Second Circuit decision.

13 With that, I'm happy to turn it over to either Mr.
14 Ozment or Mr. Fogelman representing the United States.

15 THE COURT: All right, and if I am right, I'm just
16 looking at, I think, the sixth stipulation and agreed upon
17 order with deadlines, I think the -- if I remember right,
18 the -- it has the schedule and this is -- I think the
19 stipulation we're talking about has the schedule and then
20 the motion will be heard at a date to be determined by the
21 Court and we can talk about dates, I think, before the
22 hearing is done and I know my courtroom deputy has been
23 talking to folks about deadlines and dates, so -- and that's
24 at Docket 20, so I got it and I guess that means that
25 there's a -- under that, there's a motion due on November

1 11th and opposition December 23rd and then a reply January
2 27th. All right.

3 MR. KAMINETZKY: That's correct, Your Honor.
4 That's what we're -- you know, that's what the parties have
5 agreed to, you know, should Your Honor allow us to go
6 forward with this adversary proceeding at this time.

7 THE COURT: All right. Since I've heard from one
8 defendant, I think it probably makes sense to hear from the
9 other defendant before I hear from the plaintiff, so Mr.
10 Fogelman, it's to you.

11 MR. FOGELMAN: Thank you, Your Honor. Again,
12 Larry Fogelman on behalf of the United States. We agree
13 with the Debtors' position that briefing on our anticipated
14 motion to dismiss should go forward now. We don't think
15 that the plaintiffs have stated a claim on which relief can
16 be granted and I think that's the case irrespective of
17 whatever the Second Circuit may rule. Happy to engage in
18 further dialog about that, if it would be helpful to the
19 Court. Otherwise, we do appreciate the Court's
20 consideration of the revised schedule which would give the
21 government until November 11th to submit its motion to
22 dismiss.

23 THE COURT: All right. And last but not least,
24 let me hear from plaintiffs' counsel.

25 MR. OZMENT: Thank you, Your Honor. This is Frank

1 Ozment, Stacey Bridges and Creighton Bloyd. Number one,
2 before I address the motion immediately at hand, thank you
3 for accommodating the gentleman who was just released. Most
4 of my practice focuses on representing inmates and it's very
5 difficult for them to file motions. I'm sorry he couldn't
6 be here. That was very gracious, and also on the part of
7 the Debtor.

8 With respect to going forward, it sounds like
9 we're in agreement, so I won't comment further on that. I
10 do what to add two things very briefly. Number one, it is
11 not our ambition if -- to upset the plan. We hope that
12 Second Circuit allows the plan to go forward more or less as
13 proposed by the Debtor and as confirmed by Judge Drain.

14 What we're looking for here is subordinating
15 particularly that portion of the United States' claim which
16 is basically being kept by the United States and not being
17 paid out to the states and that would not upset plan going
18 forward. Of course, of the Second Circuit rules that the
19 plan can't go forward in any form that any of us would
20 recognize as that which was proposed, I suppose, you know
21 anything can happen.

22 So that's where we are. I'd be glad to -- I will
23 take a little -- make a brief remark regarding
24 characterization of the thing as meritless. It was Judge
25 Drain himself who commented that somebody would likely

1 (indiscernible) equitably subordinate claims
2 (indiscernible).

3 THE COURT: All right. Well, I will just for the
4 benefit of all, no one needs to defend the honor of their
5 position here today. Obviously, you're going to have
6 briefing. We'll have a spirited discussion and -- but I
7 know how easy it is to slide into those kinds of discussions
8 just with preliminary remarks, so rest assured we will
9 address all that in the fullness of time.

10 I certainly have -- appreciate that everybody's
11 worked together on a schedule and sort of the path forward
12 so that we all are spending more time on what's important
13 which is the merits of the issues and not getting bogged
14 down. I mention that because we sometimes see the opposite
15 here in Court and it makes cases work a lot less well, so
16 thank you to the parties and counsel for that.

17 Mr. Ozment, anything else?

18 MR. OZMENT: Nothing further, Your Honor.

19 THE COURT: All right. So I will get around to
20 signing the stipulation and proposed order at Docket No. 12
21 but I will so order the record now. I'm happy to approve it
22 so that everybody knows the marching orders going forward
23 and we will then -- I will put it on my courtroom deputy's
24 radar screen in terms of scheduling. I will say that she is
25 probably the best person to talk to about scheduling.

1 Certainly if you wanted to get a date in -- I think there
2 was a discussion about how far out to go with dates.

3 We were talking about going out through June of
4 next year or just January and February. Perhaps we split
5 the baby, so to speak, and go out -- you talked to Ms.
6 Ebanks about getting dates in January, February, or March so
7 -- because a case like this tends to be how -- at least how
8 far out you're thinking -- and I will leave you in her
9 capable hands.

10 What I will do is sometimes in cases it's helpful
11 for me to look at the papers before putting something on the
12 calendar, just so I can make sure that giving whatever else
13 I'm doing, I have enough time to give proper consideration
14 to all you've given me, all the wisdom you've given me in
15 the papers. So don't be panicked if you don't get a date
16 right away. It probably means I just want to make sure I
17 have enough time when the briefing is done to give it proper
18 consideration and to be prepared for oral argument.

19 But we will make sure to get you on promptly once
20 the briefing is completed and with that, anything else on
21 this particular agenda matter?

22 MR. KAMINETZKY: NO, Your Honor, thank you. Just,
23 it's Docket No. 20, two zero, not twelve but --

24 THE COURT: I misspoke. I've got it right in
25 front of me, so don't worry, we'll get it entered.

1 MR. KAMINETZKY: And with that, Your Honor, let me
2 turn the podium over to my partner Jim McClammy who's going
3 to take the lead with respect to the next adversary
4 proceeding, the final item on the agenda.

5 THE COURT: All right, thank you.

6 MR. McCLAMMY: Thank you, Your Honor --

7 THE COURT: -- very much and I'll see you all in
8 the not to distance future in this adversary. So, but moving
9 on to the ascent pharmaceuticals.

10 MR. OZMENT: Your Honor, I have nothing further on
11 the docket. May I be excused?

12 THE COURT: Absolutely.

13 MR. OZMENT: Thank you.

14 THE COURT: Thank you.

15 MR. McCLAMMY: Thank you, Your Honor. Again for
16 the record, Jim McClammy of Davis Polk on behalf of the
17 Debtor, representing the Debtor-defendants in the adversary
18 proceeding that's filed. As Your Honor has seen, counsel
19 for Ascent is present as is counsel for the IACs that are
20 defendants in the action. We've conferred with all of the
21 parties ion this action, Your Honor, and I believe all are
22 in agreement that it makes sense for this matter to go
23 forward.

24 The issues that are raised are issues that would
25 need to be resolved regardless of how the decision comes out

1 in the Second Circuit. The parties had submitted at Docket
2 No. 13 an agreed briefing schedule and have adhered to that
3 agreed briefing schedule and a motion to dismiss. That
4 motion to dismiss has been filed and now is fully briefed
5 with the reply papers that were filed on Friday, October
6 21st.

7 We've coordinated with Your Honor's chambers to
8 obtain a hearing date on the motion to dismiss of December
9 6, and unless Your Honor has any further questions, I think
10 that would -- we would rest obviously on the merits with
11 respect to the papers and the argument that we'll have on
12 December 6th, but would otherwise respectfully suggest that
13 this matter should indeed go forward and be decided by Your
14 Honor at Your Honor's convenience.

15 THE COURT: All right. Yeah, I did see the
16 stipulation and agreed order extending the deadline at
17 Docket 13 and then I think I saw another one that
18 essentially teed up the motion for December 6th. I have no
19 problem with that date and so I did take a look at the
20 papers including the opposition and the reply just to try to
21 get -- wrap my head around the question that you just
22 addressed which is whether this should wait or not wait and
23 I can understand your position.

24 So let me ask if there's anybody else who wants to
25 weigh in. You don't have to because it sounds like you have

1 conferred and are in agreement, but I wanted to certainly
2 give folks an opportunity if they had something in
3 particular they wanted to add.

4 MR. PAULSEN: Your Honor, Bruce Paulsen. We are
5 in agreement from the plaintiffs' side.

6 THE COURT: All right, thank you very much.
7 Counsel, you are on mute.

8 MR. FOGELMAN: -- the opportunity to be heard.
9 Thank you, Your Honor. We have nothing further to add.
10 Just want to go on the record. The IC defendants agree with
11 what's been outlined here and we look forward to being back
12 in front of you on this matter on the 6th of December.

13 THE COURT: All right, great. So that's what
14 we'll do. Again, I appreciate that you all have
15 communicated and resolved the kinds of things that should
16 get resolved so we can focus on the merits. It's much
17 appreciated, and so we will have argument on the 6th and all
18 I will say as to the papers is they're all well written and
19 so based on even my first review, it's -- I pretty clearly
20 understand the views of the parties, so thank you for that,
21 and I look forward to chatting with you in more detail about
22 those issues.

23 And so we'll see each other on December 6th. I
24 will say, I don't know that it applies to this circumstance,
25 but I have been having ongoing conversations with counsel in

1 certain circumstances where they think there are particular
2 matters that benefit from being in person. Since this is
3 oral argument, I don't know that that falls into this
4 category and I know there are cost savings for having
5 hearings on Zoom and I also know, as we all do too well, the
6 COVID factor and how that has played out over prior winters.

7 So I only mention it because I wanted to mention
8 it at some point during this hearing that if there are
9 instances where counsel think it's appropriate and helpful
10 to have something in person you should confer with each
11 other and then let me know we're -- if COVID cooperates, I
12 guess that would be a first, we're hoping to have at least
13 sort of hybrid hearings really as soon as we can get past
14 the winter and have some sort of certainty that we're not
15 taking one step forward to take two steps back, because I
16 know certainly in instances where people need to have
17 discussions and negotiate it is helpful to have people in
18 person.

19 But again, I think this seems to be perfectly fine
20 by Zoom, but I just mention it because obviously you know
21 your case better than I do. So with that said, we'll plan
22 for Zoom unless somebody tells me something to the contrary
23 but I did want to get that sentiment out there, not only for
24 today but for all matters in this case moving forward. So
25 all right, anything else as to the Ascent Pharmaceutical

1 adversary proceeding?

2 MR. HUEBNER: Nothing further on our end, Your
3 Honor. Thank you.

4 THE COURT: All right. Thank you very much. Be
5 well. See you in December, and with that, is there anything
6 else that we need to address on the agenda here this morning
7 in this case?

8 MR. HUEBNER: I believe that concludes our agenda,
9 Your Honor.

10 THE COURT: All right. Anything else from any
11 other party before we conclude here this morning?

12 All right. With that, the Court is in recess.
13 Thank you very much and see you all soon.

14 MR. HUEBNER: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at
16 11:42 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: October 26, 2022